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Supreme Court, U.S.
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No. (1)

In The

Supreme Court of the United States

October Term, 2007

Christi S. Fingal Griffin

Petitioner

v

Office of the Chief Disciplinary Counsel
State of Missouri

On Petition for Writ of Certiorari to the
Supreme Court of the State of Missouri

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether use of a statutory scheme within a state's disciplinary system in a manner that permits a discriminatory suspension of an attorney's license constitutes a denial of due process?

Whether a State's systematic pattern of selective prosecution and discriminatory discipline of African American attorneys is a denial of the right to equal protection of the law?

Whether the suspension of an attorney's license, based in part on the exercise of her moral and religious beliefs to assist a client as well as reasonably protect her personal assets, is a denial of the attorney's right to freedom of religion?

Whether the suspension of an attorney's license that relies in part on the requirement that the attorney perform legal services pro-bono is a violation of the right to be free from involuntary servitude?

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THE ORDER OF THE SUPREME COURT OF MISSOURI SUSPENDING THE LAW LICENSE OF PETITIONER IS UNSUPPORTED BY THE EVIDENCE, FOLLOWS A DISCRIMINATORY PATTERN AND REFLECTS AN ABUSE OF PROCESS THAT VIOLATES PETITIONER'S RIGHT TO DUE PROCESS, THE RIGHT TO EQUAL PROTECTION UNDER THE LAW, THE RIGHT TO FREEDOM OF RELIGION AND THE RIGHT TO BE FREE OF INVOLUNTARY SERVITUDE; ALL WITH NO ABSOLUTE RIGHT OF REVIEW.

The Supreme Court of Missouri is the highest court in the state. Decisions affecting the license of an attorney are not reviewable by lower federal courts under the Rooker-Feldman doctrine and therefore, are final. As such, the decision to deprive an attorney of a valuable property right should be based on proceedings that adhere to all principles of the United States Constitution. Failure to have done so present compelling issues for review .. 19

While the Supreme Court of Missouri is one of venerable position, history and the case at hand prove its decisions are not free of bias and error as they pertain to African American attorneys. Unless decisions of a State's highest court can be harnessed by the Constitution of the United States, the justices who occupy those noble seats are free to rule with fiat and issue unjust orders that not only affect the substantial property rights of attorneys but affect the communities they serve as well..... 21

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Christi S. Fingal Griffin, respectfully prays that a writ of certiorari be issued to review the order of the Supreme Court of the State of Missouri issued May 29, 2007, suspending her license to practice law in the State of Missouri. (Appendix A)

OPINIONS BELOW

No opinion accompanied the order of the Supreme Court of the State of Missouri suspending the license of Petitioner. In the absence of a separate opinion, it can be concluded that the Supreme Court adopted Informant's Findings of Facts and Conclusions of Law in their entirety. Petitioner's Motion for Additional Time was denied without opinion as was Petitioner's Motion for Findings of Fact and Conclusions of Law. Petitioner's Motion for Rehearing or in the Alternative for Trial de Novo was rejected for filing pursuant to Missouri Supreme Court Rule 84.17.

No opinion was issued as to the decision of the Missouri Supreme Court to conduct a 30 minute hearing rather than a trial de novo as directed by Supreme Court Rule when the contested suspension or disbarment of an attorney is at issue.

Petitioner requested certification from the Supreme Court of Missouri regarding the constitutional questions considered in its order. The request was declined.

STATEMENT OF JURISDICTION

The order of the Supreme Court of Missouri was entered on May 29, 2007. Jurisdiction of the United States Supreme Court is invoked pursuant to 28 U.S.C. §1257(a)

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STATEMENT OF THE CASE

On May 29, 2007, the Supreme Court of Missouri entered an order suspending the law license of Petitioner for a period of three years. Although the hearing before the Court was to be conducted by de novo review, the order was entered after a 30 minute hearing in which the Chief Disciplinary Counsel for the State of Missouri knowingly made false statements to the Court that were not supported by the record. Petitioner's various requests for de novo review, rehearing and for Findings of Fact and Conclusions of Law were all summarily denied.

Questions asked during the hearing reflected a lack of familiarity with the extensive record from the proceedings below, a pre-determined conclusion by at least four of the justices, and incorrect applications of the Rules of Professional

Conduct. At no time during any of the proceedings, including oral argument was the actual language of any rule reviewed.

Petitioner's suspension follows a long line of suspensions and disbarments of African American attorneys in the State of Missouri that reflect a method of selective prosecution of disciplinary complaints, disparity in the discipline issued and use of a statutory scheme that results in disproportionate suspensions or disbarments of African American members of the Bar. Although the Missouri Bar has refrained from maintaining statistics on attorneys disciplined by race, African American attorneys comprise only 2% of the bar in the State of Missouri yet comprise an alarmingly higher percentage of those being suspended or disbarred. Petitioner was suspended for vigorously defending her client – and doing so against the wrong parties.

Further, the manner in which Petitioner's hearings were conducted at every level reflect a distinct preference toward white opposing counsel, distorted facts of the case and ignored the overwhelming weight of the evidence. The proceedings also exhibited deference to the untenable testimony of the Complainant (Irene Green)[1] and fully discounted Petitioner's

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[1] Petitioner presented to the Supreme Court of Missouri eight pages of documented contradictions made by Green on the record. The list was not exhaustive. Her "lack of credibility" was ultimately admitted by the Disciplinary Hearing Panel. Additionally, the record submitted to the Supreme Court of Missouri, showed Green had lied under oath in several bankruptcy cases, concealed income and undervalued her residence; failed to report income to the Internal Revenue Service and the Missouri Department of Revenue, and had defrauded the State of Missouri by seeking and accepting government assistance while earning substantial unreported income.

testimony which was corroborated by a witness, overwhelmingly supported by the evidence and not contradicted in a single instance.[2]

The suspension or disbarment of a large number of African American attorneys is aided by Missouri Supreme Court Rules 5.33 and 5.315 that protect the prosecutor, complainant, witnesses and other parties involved in the disciplinary process from being sued for *any* conduct engaged in during the proceedings. (Emphasis added)

Thus, as in this case, parties are free to conceal evidence,[3] lose evidence that supports Petitioner's position[4] blindside the

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[2] Despite three years of investigation, numerous hearings and multiple depositions both in a State Court trial and in the disciplinary process, Informant could not cite a single instance where Petitioner's testimony was not truthful or in which a single bankruptcy law or rule was violated despite there being over 100 federal and local laws and rules involved in the case. The Chief Hearing Officer's attempt to do so was unsuccessful.

[3] With virtually all of Green's initial complaint being false, Green filed a revised complaint with the Office of the Chief Disciplinary Counsel. (OCDC) The Chief Disciplinary Counsel then omitted the original complaint from the record provided the Supreme Court of Missouri. Further, numerous depositions and documents produced in the State Court proceeding and supporting Petitioner's case were made available to Informant but were omitted from the evidence Informant presented.

[4] According to a staff member of the OCCD, more than ten pieces of relevant evidence given to Informant and each Panel Member were missing from the record and as such were not reviewed when the case was purportedly deliberated prior to rendering a recommendation to the Missouri Supreme Court.

accused with evidence,[5] knowingly present incorrect interpretations of law,[6] lie under oath,[7] use intimidating tactics and violate Petitioner's constitutional rights, without accountability for their actions.

By schematic use of various laws and rules promulgated to monitor and discipline the conduct of attorneys, and being protected by the Rooker- Feldman Doctrine which blocks review by lower federal courts, the Supreme Court of the State of Missouri is free to issues orders that lack legitimacy. The actions are supported by the minimal statistical likelihood of review by the United States Supreme Court. Particularly when such decisions are ladened with false allegation and excessive detail, their ability to abuse the power to which the justices of that Court have been entrusted increases.

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[5]Informant omitted a 103 entry billing statement prepared by Petitioner two years prior but produced it at a hearing and joined all parties in questioning Petitioner on very specific dates and details within the billing statement. The line of questions by Panel Members suggested ex parte communications between the Panel and Informant.

[6] The Chief Hearing Officer attempted to intimidate Petitioner with threat of disbarment by citing use of Missouri's redemption law which he knew was untenable in most cases and impossible in Green's.

[7] Despite having thoroughly proved on the record Green's false allegation that Petitioner simply "shoved the first and last page of the contract" in front of Green to sign, the Chief Disciplinary Counsel, as the Informant's counsel in Petitioner's case, knowingly lied to the Supreme Court of Missouri by restating the false allegation as truth. Green herself (via her daughter) filed false complaints and made numerous false statements under oath.

In the instant case, Petitioner, Christi S. Fingal Griffin, was retained by Irene Green on June 3, 2003, to represent her in a Chapter 13 bankruptcy to stop the foreclosure on her property at 4715 Page Ave., St. Louis, Missouri. The property was occupied by one of Green's daughters and four grandchildren and had been the subject of four prior Chapter 13 bankruptcy cases filed through other attorneys. A Chapter 7 discharge had been entered in 1999. Green's daughter vowed to immediately seek additional employment to assist Green maintain all payments under the Chapter 13 plan. Despite Green's bankruptcy history and complications of a pending foreclosure, Petitioner immediately filed the case despite payment of only a small portion of the attorney's fees.[8]

Following a series of transactions in which Green entered into two real estate contracts without the advice of counsel, Green was ultimately bound to a second contract with neighbor, Larry Wilson. Overwhelming evidence later proved Wilson's contract was inflated in price and extended only to bind Green until the property could be purchased at foreclosure.

Despite Green having insisted during her initial consultation that she was current in payments on her personal residence, the property was scheduled to foreclosure three days later. While Wilson's contract price was sufficient to payoff the mortgage on Green's personal residence and cure payments on the Page property, Wilson was unwilling to consummate the sale prior to the foreclosure - purportedly due to a sewer lien and small judgment lien.

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[8] No consideration was given to facts that Petitioner represented Green in three contested bankruptcy cases for a small portion of the fees, vigorously represented her against Wilson and had committed to representing her through a state court proceeding against Wilson for fraud and breach.

In an effort to close on the contract and prevent the foreclosure, Petitioner secured the immediate release of the incorrectly filed judgment lien, but was unable to ascertain the amount of the sewer lien prior to the foreclosure date. Petitioner thus encouraged closing with all proceeds from the sale being escrowed to cover payment of the sewer lien. Wilson and his attorney adamantly refused.

With her prior Chapter 13 having been dismissed, Green filed a new Chapter 13 case and proposed a plan that provided full payment of the sewer lien and outstanding mortgage at closing. During the week between the original foreclosure date and the continued date,[9] Wilson opposed closing, refused to release the contract and unnecessarily filed an Objection to Debtor's Emergency Motion to Sell in the US Bankruptcy Court giving numerous unsubstantiated reasons to grant a pending Emergency Motion for Relief from Stay.

With the knowledge that Wilson would not close prior to the foreclosure and knowing the automatic stay would be lifted again in the new case, Petitioner called the Missouri Ethics Counsel to ascertain a manner in which she could ethically pay the near $10,000.00 delinquency Green owed, and to protect the funds being advanced. Having been advised by The Ethics Counsel less than two business days prior to the continued foreclosure[10] that Petitioner could only help by purchasing

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[9] Missouri law provides a one week continuation of a pending foreclosure following the filing of a bankruptcy to conduct an emergency hearing to allow the foreclosure to proceed. Subsequent continuations must be by agreement between the parties.

[10] Counsel for the foreclosing mortgage company filed the necessary motion in the U.S. Bankruptcy Court seeking to proceed with the sale and made clear that her client would not consent to a voluntary continuance.

Green's personal residence in a "genuine purchase,"[11] Petitioner continued to seek other buyers and to encourage Wilson to either close and escrow the funds or release Green from the contract. Wilson, via his attorney, refused.

Unable to find other solutions to the imminent loss of Green's home and equity, and following the advice of the Missouri Ethics Counsel, Petitioner consulted with Green and at least five of her daughters regarding the purchase of her property.[12]

Only one business day remained before the continued foreclosure sale, at which point Petitioner convinced a friend to risk entering into a back up contract for the purchase of Green's property to stop the foreclosure, save her equity and preserve her right to close on the Wilson contract.[13] The purchase price was for the $90,000.00 fair market value of the house,[14] and as

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[11] The meaning of "genuine purchase", as explained by the Missouri Ethics Counsel when speaking with Petitioner, was that Petitioner could not merely extend money to Green under the contract and then later cancel the contract. That meaning was changed when the Ethics Counsel testified on behalf of her client, The Missouri Disciplinary Hearing Panel.

[12] Unwilling to be involved in the purchase of the property alone, and unable to provide the full $61,000+ necessary to guarantee termination of the sale, Petitioner sought funds from a friend and her mother to pay the $90,000.00.

[13] After consulting with his wife, also an attorney, Frank Simmons agreed to assist Petitioner help her client and reasonably wanted some degree of assurance against loss and a potential for profit upon resale.

in any real estate contract as well as any contingency contract entered into by attorneys or others, the contract provided for potential compensation of the risk undertaken. Despite the overwhelming evidence that Wilson intended to purchase the property only at foreclosure,[15] Informant used his contract price

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[14] Although Wilson's contract called for payment of $130,000.00, his actions prior to and after the foreclosure proved unquestionably, that the offer was inflated (later admitted) to lure Green into the contract.

[15] 1) Wilson presented himself to Green in writing as a retired neighbor simply rehabbing houses as a hobby. In fact, he was a real estate developer and, a few months later, was in the process of rehabbing a downtown high rise building into residential and commercial condominium using a rare and sophisticated financing scheme.

2) A neighbor for over 15 years, Wilson denied knowing Green's house would foreclosure five days after he approached her.

3) Wilson resisted every effort of Petitioner to close on the contract prior to the foreclosure purportedly because of an outstanding sewer lien. Based on the mortgage balance and his alleged offer, there was approximately $70,000.00 to escrow for any unpaid lien.

3) Wilson's deposition reveals he appeared at the bankruptcy hearing moments prior to the foreclosure with a cashier's check - payable to the Sheriff. As such, he purportedly was willing to purchase the property at foreclosure for $130,000.00, subject to the same outstanding liens but not from Green to help her avoid loss of her home.

4) Properties purchased at foreclosure are paid for in the

as a measure of value. Informant presented no concrete evidence.

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amount of the high bid. It was not logical to have brought a $130,000.00 cashier's check payable to the Sheriff without knowing the final bid.

5) Wilson, represented by a large law firm, refused to produce evidence of his ability to pay to support Petitioner's Motion to Sell and in fact, filed a Response in Opposition to Debtor's Motion to Sell citing more than 20 reasons the motion should not be granted.

6) Wilson claims to have shredded the $130,000.00 cashiers check following the cancelled foreclosure, effectively shredding $130,000.00 in cash.

7) Following the foreclosure, Wilson resisted closing on the terms of his own contract and eventually offered to pay the original price only upon threat of suit. His amended offers contained several onerous contingencies not present in the original contract and did not come until a month after the scheduled foreclosure.

10) Wilson eventually filed a Petition for Specific Performance but prayed to be relieved of "the obligation" to buy the property.

11) Wilson released Green from the contract and suit at the first opportunity.

12) Wilson Admitted in his deposition that the property was in "deplorable condition" and was worth $90,000.00 to $120,000.00.

The contract Petitioner entered into with Green, was more than fair and reasonable, clearly and fully set forth all terms in writing and was prepared by a third party real estate attorney. Specifically, the contract gave Green the fair market value of her property based on over five different measures of value (presented as evidence), gratuitously provided for additional funds to be paid to Green if the property sold in excess of $150,000.00, (whether by an increase in value over time or by necessary improvements made by Petitioner and Simmons), and allowed Green and a daughter to occupy both units of the property rent free for up to nine months pending re-sale. In a harrowing reversal of intent and alarming misstatement of facts, Informant prosecuted this case based solely on personal conjecture and Green's false testimony.

Due to Petitioner's efforts, Green remained in her property for two years with neither payment of rent or mortgage. In contrast to the risks undertaken by Petitioner, Petitioner was never compensated for rent, risk or fees despite losing fees from precluded income. Petitioner never sought transfer of the deed as security for the money expended on Green's behalf due to the pending bankruptcy and pending contract.

Prior to reviewing the contract under the time constraints created by Green, Petitioner presented Green with a Conflict of Interest form as required by the Rule 4-1.7(4) explained its terms and gave Green an opportunity to hire another attorney to represent her in the transaction.[16] Green declined to do so.[17]

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[16] Had Green chosen to hire another attorney it would have resulted in no more than additional attorney's fees being incurred by Green. Petitioner and Simmons were purchasing the property solely to assist Green, extended very generous terms, left their own interests unprotected, and were unwilling to pay any more than the amount offered.

The terms of the contract (and upcoming court proceedings) were carefully reviewed with Green and three daughters for over two hours, interlineations were initialed by all parties on five of the eight pages of the contract[18], and Green signed with two of her adult daughters as signed witnesses. The following day, Green accepted full Chapter payment of her mortgage by Petitioner concurrent with dismissal of her Chapter 13 knowing bankruptcy laws and Wilson's contract precluded Petitioner from taking back a deed to the property.

In further protection of Green, Petitioner included a provision that the contract was "null and void" in the event the Wilson contract was consummated.[19] Thus, even the provision

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[17] Rule 4-1.7(4) did not require written notice of the right to hire independent counsel until revised in 2007, thus giving Green the opportunity to falsely testify that no opportunity was given. In fact, not only was she given the opportunity numerous attorneys were available during the Bankruptcy Court docket the following day and neither Green nor her two daughters who accompanied her to court chose to avail themselves of any independent advice.

[18] The copy of the contract Green gave to her attorneys lacked the numerous late night interlineations, thus prompting the sudden false claim when represented by counsel that she was only shown the first and last page.

[19] As further indication of the bias shown by the Supreme Court, the summary of the case prepared by the Supreme Court staff falsely stated, among other things, that Petitioner's contract provided for payment of the $130,000.00 to herself. Indeed, Petitioner's contract provided no protection for herself nor Simmons in the event the original contract was consummated.

that provided for compensation of risk depended fully on Green's integrity.

Following acceptance of the contract, termination of the foreclosure and voluntary dismissal of the Chapter 13, Petitioner pursued Wilson to consummate all terms of the contract including the purchase price originally offered and the "cost of bringing this matter to conclusion.", in order to compensate Green for her loss of equity based on the terms of his spurious contract and the substantial fees incurred in protecting Green's interest. Indeed, Green remained bound to Wilson and was unable to close on the new contract.

At no time was Wilson willing to pay the $130,000.00 offered Green under his contract, even when Petitioner offered to waive a "significant portion of her fees." As such, facing an impasse between Petitioner's insistence that Wilson honor the original contract and his lower offers and onerous conditions not present in the original contract, he ultimately filed a Petition for Specific Performance.

Unfamiliar with a Court of Equity and due to Green's procrastination, Petitioner personally sought new counsel for Green and guaranteed payment of all fees. At no time did Petitioner demand payment of her own fees, a fact overlooked by the Panel, Informant and Court.

Although Petitioner and Green could not close on their contract due to the prior obligation, Green requested payment of nearly $10,000.00 more to stop the foreclosure on her daughter's home. When Petitioner refused to pay out any additional sums prior to closing unless an unrecorded deed was exchanged,[20] Green declined. Efforts to encourage her to honor

[20] Green's second property was valued far below the balance owed and her daughter had proven through eight bankruptcies, including the last that she was not going to maintain payments.

the contract after she signed a mutual release with Wilson were unsuccessful and Petitioner and Simmons intervened in the pending lawsuit to protect the money paid on Green's mortgage and car. Knowing the validity of the contract, Green's only means of succeeding in the lawsuit, was to file a bar complaint against Petitioner raising numerous allegations that were later proven to be false.

Despite having conclusively shown at the committee hearing that Green's complaint and subsequent testimony were replete with inconsistencies and false statements, the prosecutor (later appointed the Chief Disciplinary Counsel for the State of Missouri on April 1, 2007) filed what was deemed the longest Information filed in the Chief Hearing Officer's 17 years on the disciplinary committee.

Notwithstanding the length of the Information, Petitioner meticulously answered every paragraph in minute detail. Petitioner cooperated with every request of the Hearing Panel, and produced over 130 pieces of evidence refuting the allegations.

Four hearings were scheduled over a six month period during which time Petitioner's evidence was lost, cross examination of Green was interrupted and terminated early, Petitioner was blind sided by evidence not provided prior to the hearing, the Chief Hearing Officer attempted to intimidate Petitioner with threat of disbarment by incorrectly citing Missouri's redemption law and alleging Petitioner lacked credibility on the singular basis of a typographical error in the billing statement, accusing Petitioner of ulterior motives for vigorously defending Green and for seeking direction from the Ethics Counsel, and was told that rather than seek payment of

legal fees from Wilson, who had created the unnecessary fees, Petitioner should have represented Green pro-bono.[21]

Further, Informant and Hearing Panel Members engaged in ex-parte communications, Informant omitted the original complaint from the record presented to the Supreme Court, Petitioner's evidence was never reviewed, and at no time was the actual language of the rules purportedly violated ever read, written or discussed. Despite the acknowledged lack of credibility of Green, the lack of any evidence supporting any untrustworthiness of Petitioner, the Panel still found that Petitioner violated Rules 4-1.8(a), 4-1.8(b), 4-1.2(a), Rules 4-1.4, 4-1.7(b), 4-1.16, 4-3.3(A)(1), 4-8.4(c), and Rule 4-8.4(d), and recommended suspension for three years. The result was inconsistent with the evidence presented yet wholly consistent with discipline meted out to African American attorneys in the state of Missouri. No copy of the Panel's Findings of Facts, Conclusions of Law and Recommendation of Discipline was served on Petitioner as required by Supreme Court rule.

With the exception of Rule 4.3.3 regarding Candor Toward the Tribunal, in which Informant produced no evidence to show that Petitioner had concealed any material evidence from the US Bankruptcy Court, Petitioner had in fact complied with all bankruptcy laws and rules regarding disclosure of information in a pending case and every rule allegedly violated was supported solely by the false testimony of Green and the conjecture of Informant.

Indeed, the benefits given Green under the contract were more than fair and reasonable and the risk undertaken by

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[21] Suspending Petitioner's license for ethically billing Wilson for fees incurred under his contract which were unnecessarily created by his fraud rather than extend substantial legal services pro-bono, is tantamount to involuntary servitude.

Petitioner far outweighed that of Green. Saving Green's house from imminent foreclosure[22], preserving her rights under the Wilson contract and her right to pursue him for damages for fraud and breach of contract, saving her second property from foreclosure, and saving her car from repossession, can not by any measure be deemed to be "adverse to [the] client" according to the language of Rule 4.1.8. The so called harm suffered by Green (the stress caused by Petitioners actions according to Informant) even if true, was far out weighed by the stress of a foreclosure and its subsequent ramifications.

Had the foreclosure taken place, Green would have lost her home (and that of her daughter, son-in-law and grandchildren), her second daughter's residence, her car, her equity and her right to sue Wilson for fraud and breach of contract. She would have had no down payment for a new residence and renting with her bankruptcy history would have been all but impossible. Informant's suggestion that Green was harmed because Petitioner *might* have profited in an amount consistent with every other contingency contract between attorneys and clients upheld for decades, is a glaring display of discriminatory treatment.

Again, the alleged violation of Rule 4.1-8(b) Use of Information, relies on the untenable testimony of Green. Logic and Petitioner's testimony indicate that Green consented to use of any information necessary to stop the foreclosure and pay off her mortgage. Additionally, the Comments to the Rule expressly permitted use of information when reasonably

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[22] Of the more than 30 attorneys and nine judges involved in this case in one manner or another, no one has ever suggested a single alternative to saving Green's house from foreclosure other than the risk undertaken by Petitioner.

necessary. The finding also disregards the language of the rule that requires a "disadvantage" to the client.[23]

The alleged violations of Rule 4-1.2(a) and Rule 4-1.4 Abiding by a Client's Decision and Keeping the Client Reasonably Informed are incorrect, disproved by written evidence and Petitioner's testimony, and as such, supported only by Green's false statements. Green clearly wanted her house spared from foreclosure, entered into the contract with informed consent and the advice of her daughters, and was consulted with and consented to every negotiation with Wilson's attorney regarding enforcement of his contract. Petitioner's detailed itemized statement and letters to Green reflecting those discussions were ignored along with all other evidence introduced.[24]

Findings of alleged violation of Rules 4-1.7(b) and 4-1.16 regarding representation again, are inconsistent with both reason and the facts of this case. In every instance, from the terms of the contract to the negotiations with Wilson's attorney as stated above, Green's interest were always paramount to that of Petitioner or any other party. Petitioner engaged in enormous

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[23] Use of certain information regarding the potential resale value of Green's property was absolutely necessary to convince Simmons to risk investing in her property to stop the foreclosure. As such, there was no disadvantage to Green but rather the advantage of saving her home, equity and rights.

[24] Only the discriminatory treatment of Petitioner would ignore that it would have been far more expedient and beneficial for Petitioner to have allowed Green to close on the Wilson contract, thereby waiving her claims against him, and simply reap the benefits of the contract and charge all legal fees to Green. Instead, Petitioner vigorously pursued her client's rights under the Wilson contract without pay.

personal risk and vigorously represented Green without pay from bankruptcy filings to contract negotiations. Had Petitioner's evidence been considered, it would have been clear that at no time were Petitioner's interest not subordinated to those of Green. Once Green reneged on the contract with Petitioner, Petitioner immediately advised her to seek other counsel. Prior to that time, Petitioner abided by Green's right and request to continue her vigorous representation. Since there was no professional misconduct on the part of Petitioner, the actual language of 4-1.8(b) did not require withdrawal.

And finally, the alleged violation of Rule 4-8.4(c) and (d) regarding dishonesty, fraud, and deceit merely reflect the schematic use of the Rules of Professional Conduct to achieve the wrongful suspension of another African American attorney. Only by use of Green's false testimony and complete disregard for Petitioner's credibility could a conclusion be drawn that Petitioner violated either sub-part of Rule 4-8. It is noteworthy that if Green, Informant or the Chief Hearing Officer believed their own allegations, it would not have been necessary to create a record in which each of them made false statements during the proceedings or for Informant to lie to the Supreme Court of Missouri.

REASONS FOR GRANTING THE WRIT

THE ORDER OF THE SUPREME COURT OF MISSOURI SUSPENDING THE LAW LICENSE OF PETITIONER IS UNSUPPORTED BY ANY MEASURE OF EVIDENCE, FOLLOWS A DISCRIMINATORY PATTERN AND REFLECTS AN ABUSE OF PROCESS THAT VIOLATES PETITIONER'S RIGHT TO DUE PROCESS, THE RIGHT TO EQUAL PROTECTION UNDER THE LAW, THE RIGHT TO FREEDOM OF RELIGION AND THE RIGHT TO BE FREE OF INVOLUNTARY SERVITUDE; ALL WITH NO ABSOLUTE RIGHT OF REVIEW.

I. The Supreme Court of Missouri is the highest court in the state. Decisions affecting the license of an attorney are not reviewable by lower federal courts under the Rooker-Feldman doctrine and therefore, are final. As such, the decision to deprive an attorney of a valuable property right should be based on proceedings that adhere to all principles of the United States Constitution. The failure to have done so presents compelling issues for review.

Paramount to consideration of this case, is the lack of due process afforded Petitioner from the initial Disciplinary Panel hearing through the oral arguments before the Supreme Court of Missouri. This breach was punctuated by failure to examine the actual language of the rules allegedly violated and substituted by the strong arm of the systems' discriminatory objective. The actions in this case display the "judicial bias" referenced in US v Brown 72 F3 25, that can taint the outcome of a given case.

"The integrity of the body's decision depends on the integrity of the process ..." If that process is infected with racial discrimination, doubt is cast over the fairness of all subsequent decisions. Cambell v Louisiana 522 U.S. 392 at 393 (1998). There must be an opportunity to be heard and the proceedings must be fair. Bradley v Fisher 80 US 335.

Although cases regarding attorney discipline have been considered by this Court, Petitioner found none that have interpreted the affect of a state's highest court's failure to consider the actual language of the law, its failure to review the case de novo, its failure to thoroughly review the record of the Hearing Panel, the clear bias of the hearing panel, the lack of competent evidence supporting the decision and the lack of due process in all relevant proceedings.

The importance of examining the language of the rules and applying the facts of the case is expressed in US v Brown. There the Fifth Circuit Court of Appeals appropriately took into consideration the official comments to the rule in question. Such comments are provided to shed additional light and direction as to the composite meaning of the rule itself. In the instant case, neither the comments, nor the rules themselves were ever analyzed. Without review of the language itself an erroneous view of the law and application of the evidence will necessarily result. When such egregious oversight occurs the discretion of the Court is abused and due process is denied.

In the recent slip opinion in Phillip Morris v Williams 549 U.S.__ (2007), this Court held that [u]nless the State insists upon standards that will cabin ... discretionary authority, its ... system may deprive a defendant of "fair notice..." citing BMW, 517 574 (1996) that "it may threaten "arbitrary punishments," "i.e. punishments that reflect not an "application of the law" but a decisionmaker's caprice. Phillip Morris supra citing State Farm v Campbell, 538 U.S. 408, at 416 (2003) Further, the Court holds that "[b]ecause attorney suspension is a quasi-criminal punishment in character, any disciplinary rules used to impose this sanction on attorneys must be strictly construed resolving ambiguities in favor of the person charged. (emphasis added) U.S. v. Brown 72 F.3rd 25 at 29 (5th Cir. 1995) Strict construction was impossible in the instant case in complete absence of review of the Rules of Professional Conduct. This Court has long held that "[b]efore a judgment of disbarring an

attorney is rendered he should have ... ample opportunity of explanation and defense." Ex parte Robinson 86 US 505 at 512. In the instant case, that opportunity was denied both in the time allotted Petitioner to present evidence, witnesses, and cross examine the complainant, and also in the inability to explain pertinent actions in light of the actual language of the rules. The manner in which these proceedings were conducted was a "reckless disregard" of the Petitioner's rights. Waters-Pierce Oil Co. v Texas (No. 1) 212 U.S. 86 (1908) quoting Backus v Fort Street Union Depot Co., 169 U.S. 565, Fawyerweather v Ritch, 195 U.S. 297; Patterson v Colorado, 205 U.S. 461

II. While the Supreme Court of Missouri is one of venerable position, history and the case at hand prove its decisions are not free of bias and error as they pertain to African American attorneys. Unless decisions of a State's highest court can be harnessed by the Constitution of the United States, the justices who occupy those noble seats are free to rule with fiat and issue unjust orders that not only affect the substantial property rights of attorneys but affect the communities they serve as well.

When considering that to date, the documented violations of the white opposing counsel in this case (whose irrelevant legal affiliation was parenthetically noted in Informant's brief) has never been investigated, despite clear evidence being before the Chief Disciplinary Officer, the existence of racial disparity that violates the constitutional rights of Petitioner and other African American attorneys in Missouri becomes irrefutable. This pattern of prosecution fosters an atmosphere of brazen discrimination and creates a chilling affect on the daily practice of those attorneys whose vigorous representation of their clients may, more likely than their white counterparts, result in discipline being leveled against them, and being prosecuted in a

manner that violates both the Missouri Constitution and the Constitution of the United States.

When an attorney is consistently faced with the reality that suspension or disbarment is nearly as likely as not being admitted to the bar on the first hand, the clients represented are subject to a level of representation less than that to which they are entitled. No attorney is free to diligently pursue actions against large, powerful law firms when the consequence of doing so is the vindication of those firms by colleagues who occupy positions of discipline.

This Court has found that "[r]equiring the application of law, rather than a decisionmaker's caprice, does more than simply provide citizens notice of what actions may be subject to punishment; it also helps to assure the uniform general treatment of all similarly situated persons that is the essence of law itself." Railway Express Agency, Inc. v New York, 336 U.S. 106, 112 (1949)" Petitioner has been the victim of such caprice on the part of the Missouri Bar's Office of Chief Disciplinary Counsel as well as the Supreme Court of the State of Missouri. Members of the Supreme Court of Missouri typically rise from the ranks of large law firms, and it is to those firms that they return upon retirement from the bench. The ruling in this case, clearly shows the influence such considerations hold. In the State of Missouri, those firms hold a dismal record of employing and retaining any significant number of African American lawyers.

Further, case law reported by the Supreme Court of Missouri as it pertains to the discipline of attorneys, does not provide justification for the order issued against Petitioner but gives further rise to a suspicion of inconsistent patterns of rulings.[25]

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[25] Cases such as McRentals, Inc. v Barber 62 S.W.3d 684 (Mo. App. W.D. 2001) with nearly identical facts resulted in a finding of no violations. Matter of Smith 749 S.W.2d 408 (Mo. banc 1988) held that a "lawyer will be disciplined only if such

Likewise, statistical results gathered in a survey of Missouri attorneys are inconsistent with a finding that the contingency provision in Petitioner's contract was excessive. The contingency provision, clearly set forth, discussed with, and agreed to by Green, was consistent with the contingency fee arrangement by other attorneys, particularly measured by the enormous risk assumed.[26]

Although the survey shows that with increased risk there is an increase in the percentage of compensation,[27] just such a

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action is warranted by preponderance of the evidence,", Carey and Danis, 89 S.W. 3d 477 (Mo. banc 2002) in which the Supreme Court justified the attorney's multiple violations and misrepresentations to the Court yet at least one judge recommended no more than a public reprimand. In re: Snyder 35 S.W. 3d 380 (Mo banc 2000) in which the Respondent was found guilty of transferring real estate to himself over the objection of his client was given only a six month suspension.

26 According to The 2005 Missouri Bar Economic Survey Results "[t]he largest percentage of respondents that negotiate contingency fee arrangements with their clients report they charge between 30-34% of the settlement proceeds. If the case goes to trial, 30% of the respondents reported charging between 35-40%; 24% indicate they charge between 30-34%; 11% charge between 41-50% of the proceeds. 58.4% indicate their contingency fee is taken from the gross proceeds rather than from the net." By any measure, the risk undertaken by Petitioner far exceeded that of personal injury cases and the percentage of any potential profit was less than even the lowest percentages charged by attorneys.

27 Petitioner not merely devoted legal time to Green without guarantee of compensation (which never occurred) but paid out (along with the co-buyer) in excess of $64,000.00 to preserve Green's right to consummate a $130,000.00 contract. The

contingency in Petitioner's contract was a basis for finding a violation of Rule 4-1.8. Such finding discredits the holding of this Court that "[t]o punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort." Bordenkircher v Hayes, 434 U.S. 357, 363 (1978) The inability to rely on the advice of a state's Legal Ethics Counsel and to follow the explicit language of the Rules of Professional Conduct in successfully achieving a client's objective without suspension of one's license flies in the face of notice and equal protection of the law.

As such, this type of selective and discriminatory prosecution and adverse decisions in the disciplinary proceedings of Petitioner and other African American attorneys calls for "close examination" such as that given in instances of racially remedial laws. Fullilove v Klutznick 448 U.S. 488, (1980) The denial of an attorney to continue the practice of law free of unreasonable demands of adherence to Rules of Professional Conduct that are interpreted with fiat only when allegedly violated by an African American attorney is a denial of equal protection under the law. "Equal protection of the law is something more than an abstract right. It is a command which the State must respect, the benefits of which every person may demand, "Tumey v Ohio, 273 U.S. 510, 535, and is one that extends to "judicial authorities" 386 Waters-Price at 91.

The decision to ignore infractions of white attorneys, particularly members of silk stocking law firms, while vigorously pursuing even false complaints against Petitioner and other African American attorneys "bestows a benefit ... identified by racial or ethnic criteria which cannot be justified..." Fullilove at 452

$30,000.00 in potential profit represented only 23% of the $130,000.00 benefit to Green. If measured by the $70,000.00 in equity preserved and other benefits, the percentage fell within any measure of compensation.

Further, a States' highest courts' arbitrary and capricious application of rules creates a chilling affect on attorneys whose efforts to represent their clients in all but the most mundane and curtailed application of the law is done under threat of being suspended or disbarred. As recently stated by this Court "[m]istaken findings of liability would ""chill the very conduct the ... laws are designed to protect."" Wyerehaeuser Co. v Ross-Simmons Hardwood Lumber Co 549 U.S. ____(2007) (slip opinion) quoting Brooke Group Ltd. v Brown & Williamson Tobacco Corp., 509 U.S. 209 (1993) quoting Cargill, Inc. v Monfort of Colorado, Inc. 479 U.S. 104 at 122, n. 17)

There is neither a "design or operation" in the handling of bar complaints against African American attorneys other than systematically eliminating the few members of the Bar. The practice further deprives the African American community as a whole from vigorous and affordable representation against unlawful schemes and practices such as the one perpetrated against Petitioner's client; that of the Chief Disciplinary Counsel while representing a private client in condemnation proceedings[28]; or of a Hearing Panel member's defense of a bank, through appeal, who charged its customers fees unlawfully. Clearly two different standards apply.

There can be no other result of the discriminatory treatment of African American attorneys, as displayed in this case, than to ""promote "notions of racial inferiority..."" Parents Involved in Community Schools v Seattle School Dist. No. 1 127 S. Ct. 2738 U.S. (2007) quoting Richmond J.A. Croson Co. 488 U.S.

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[28] Prior to becoming the Chief Disciplinary Officer for the State of Missouri, Informant was embroiled in a lawsuit in which, according to allegations reported in the St. Louis Post Dispatch, an elderly widow in a wheel chair was being forced from her property "without just compensation" by Informant's abusive use of Missouri's condemnation laws.

469 at 493 Further, The Supreme Court of Missouri's act of suspending Petitioner's license in part because Petitioner acted on her religious beliefs to assist a client in need and to act prudently over her own assets displays an intolerance for religious freedom that is repugnant to the United States Constitution.

Green, having exhausted her bankruptcy options and having bound herself to a fraudulent contract, compelled Petitioner, by her religious beliefs, [29]t o provide assistance not inconsistent with the Rule of Professional Conduct. The risk undertaken by entering into a contract for the purchase of property that was in deplorable condition, was uninsurable due to electrical problems, had no property inspection, was encumbered by an existing easement consuming the rear yard, had not been properly maintained for years and which all but promised involvement in litigation, was justifiably compensated by the potential of profit. An act that displayed the utmost diligence toward a client was executed with competence and demonstrated unwavering adherence to the law and ethics, was obtusely construed to be an act of fraud. To have expected Petitioner to enter into a contract under any circumstances let alone those present in the instant case and expect no potential profit from the investment made, is entirely unreasonable and reflects a double standard. Further, the suspension of Petitioner's license based in part on those grounds, violated Petitioner's religious belief to act responsibly over the funds in which she was entrusted and the right to engage in free enterprise.[30]

As applied to the facts of this case, the rejection of Petitioner's exercise of her religious beliefs both in purchasing

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[29] Parable of the talents. Matthew 25:14-30

the property to protect it from foreclosure and in protecting her own assets by providing for the possibility of a return on the money invested had no secular purpose. The state's interest in establishing certain rules to regulate the practice of law is to protect the public interest. It can not be ignored that but for Petitioner's compulsion to assist her client against the act of a third party, motivated by her religious beliefs rather than pay, Green would have suffered the significant harm of losing her home, rental property, car, and home equity.

CONCLUSION

The Missouri State Code of Professional Responsibility and all related rules and laws are written in such nebulous terms and construed in such an arbitrary and capricious manner, ignoring The Missouri Supreme Court's own precedents, historic notes and comments, so as to fail to give proper notice to the respondents thus denying a property right without due process.

Further, the facts of this case present compelling reasons for a grant of certiorari to address the questions of rank injustice and infringement of substantial personal liberties. Justice calls for precedent to be set as it pertains to the use of power by states' highest courts and their proper recognition of the rights invoked under the United States Constitution.

Having failed to apply the language of the rule governing the decisions in this case, the decision of the Supreme Court of Missouri in the instant case was based solely on the admittedly false and untenable accusations of the complainant and the flawed conjecture of the Informant. The Court's refusal to

address the constitutional issues raised by Petitioner at various stages of the proceedings is tantamount to further denial of due process. Had such constitutionally protected procedures been recognized, the evidence adduced and application of the actual language of the Rules would have necessarily resulted in a different outcome. Herb v Pitcairn 324 U.S. 117 at 127.

Since the language of the Rules of Conduct were never considered, the order suspending Petitioner's license could not have rested on adequate state grounds. Further, the constitutional issues raised by Petitioner and ruled on through the Court's silence incorrectly disregarded Petitioner's constitutional rights. Particularly in light of the advice given by the Legal Ethics Advisor "the penalties imposed upon the defendant are so excessive as to constitute a deprivation of its property without due process of law." Waters-Price at 90.

Such consistent biased treatment of litigants in a process that ultimately deprives an attorney of a valuable property right "strikes at the fundamental values of our judicial system" Rose v Mitchell, 443 U.S. 545, at 556 (1979).] "Discrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice." at 555. It grows more "pernicious" when the attack reaches a significant number of lawyers who, in most instances, provide legal services to a large segment of the population who otherwise would be denied access to justice.

Unless a disciplinary process reviews the language of the rules for the Respondent and member of the various committee and panels to render interim decision, affords an opportunity to examine the actual language of the rules and apply the evidence, testimony and other facts of the case, fair notice has not ensued. This is particularly true when comments and questions from various members of the Hearing Panel, members of the Missouri Supreme Court, the Information and the Findings of Facts and Conclusions of Law reflect that the rules were neither understood nor properly applied.

The instant case is an example of the "decisionmaker's caprice and "arbitrary punishment" that bore no relationship to Petitioner's actions, none of which violated the actual language of the Rules, that caused no harm to the client, but to the contrary provided a substantial benefit, and that reflected only the utmost effort to carry out the responsibilities of Petitioner's duty to her client. The result in this case was "arbitrary coercion" at its worst. Daniels v Williams 474 U.S. 327, 331 (1986).

Petitioner not only adhered to the letter of the Rules of Professional Conduct, but sought direction from the Missouri Bar's Ethic's Advisor. The suspension of one's law license without the slightest examination of the rules purportedly violated, application of the language and discussion of the evidence admitted, could not fall with this Court's mandate to provide "fair notice" and thus denies due process.

The denial of one's right to practice law, particularly after 23 years of practice and service to the bar and community, and which also results in the denial of the respondent's primary source of support, is neither insubstantial nor frivolous. Petitioner therefore, asks the US Supreme Court to review the non-federal grounds of the decision both "in substance and effect," as reflected in the Proposed Findings of Facts and Conclusions of Law submitted to the Missouri State Supreme Court by the Informant, and to find that the decision was without fairness or support.

Additionally, while no one rule necessarily violates the rights guaranteed under the Constitution, discriminatory treatment and denial of constitutional rights are woven into a statutory scheme that invites abuse. Only by review of this case will the rights of the citizens of the State of Missouri be protected by the supremacy of the United States Constitution. Absent such review, the Constitution of Missouri, the Constitution of the

United States and the laws established by the Missouri Supreme Court itself will be abrogated by a flagrant disregard for the rule of law and abuse of substantial power distributed in a discriminatory and disparate manner.

Respectfully Submitted,

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Counsel of Record - Pro-se

APPENDIX A

Supreme Court of Missouri

en banc

May 29, 2007

In re: Christi S. Fingal-Griffin)
) Supreme Court No. SC88322
Respondent.) MBE NO. 33527

ORDER

WHEREAS, the Chief Disciplinary Counsel has filed the complete record before the Disciplinary Hearing Panel, and said cause having been briefed and argued;

The Court finds Respondent has violated Rule 4-1.7(b), 4-1.8(a), 4-1.8(b), 4-8.4(c), 4.8.4(d), 4-1.2(a), 4-1.4, and 4.1.16(a) of the Rules of Professional Conduct and should be disciplined;

Now, Therefore, it is ordered that Respondent, Christi S. Fingal-Griffin, be, and she is hereby, suspended from the practice of law in this state, and no petition for reinstatement will be entertained for a period of three years from the date of this order.

It is further ordered that Christi S. Fingal-Griffin comply in all respect with Rule 5.27 – Notification of Clients and Counsel.

Costs taxed to Respondent.

Day – to – Day

White, J, not participating

APPENDIX B

U.S. Constitutional Provisions Involved

1st Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

13th Amendment

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the Unites States, or
Any place subject to their jurisdiction.

14th Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United State; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutory Provisions Involved

Missouri Supreme Court Rule 4 / pertinent sub parts

RULE 4-1.7: Conflict of Interest:

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests unless:

(1) the lawyer reasonably believes the representation will not be *adversely* affected;

(2) the client consents after consultation.

COMMENT

Loyalty to a client is ...impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. ...

Lawyer's interest. The lawyer's own interests should not be permitted to have *adverse* effect on representation of a client.

RULE 4-1.8: Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client *unless*:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is given a *reasonable opportunity* to seek the advice of independent counsel on the transaction; and

(3) the client consents in writing thereto.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client *unless* the client consents after consultation.

COMMENT

Transactions Between Client and Lawyer. As a general principle, all transactions between client and lawyer should be *fair and reasonable* to the client. In such transactions a review by independent counsel on behalf of the client is *often advisable.* Furthermore, a lawyer may not *exploit* information relating to the representation to the client's *disadvantage.*

RULE 4-8.4: Misconduct

It is professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

RULE 4-1.2: Scope Of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d), and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter.

(c) A lawyer may limit the objectives of the representation if the client consents after consultation.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

COMMENT

Scope of Representation

Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations.

RULE 4-1.4: Communication

(a) A lawyer shall keep a client reasonably informed about the status of the matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 4-1.16: Declining or Terminating Representation

(a) Except as stated paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

Missouri Supreme Court Rule 5 / pertinent sub parts

5.01. The Advisory Committee - Membership and Tenure

This Court shall appoint a committee known as the "Advisory Committee," which shall be composed of not fewer than six lawyers and two nonlawyers. This Court will attempt to maintain nonlawyer membership at no less than one-fourth of the total membership. The members of the committee on the effective date of this Rule 5 shall continue as members of the committee until their terms expire. Before commencing the duties of a member of the committee, each member shall take an oath to support the constitution of the United States and this state and to fairly and impartially perform the member's duties. Each member shall be appointed to a four-year term. No member shall be requested to serve more than two successive terms exclusive of any unexpired term. Each member shall serve until a successor is appointed and qualified. The members

of the Advisory committee shall serve without compensation, but their reasonable and necessary expenses shall be reimbursed. This Court shall designate one members of the Advisory committee as chair. The committee shall designate one member as secretary. The chair shall be the chief administrative officer, and the secretary shall keep minutes of the proceedings of the committee.

5.02. Regional Disciplinary Committees - Membership and Tenure

This Court shall appoint a committee in each region known as the "Regional Disciplinary Committee," which shall be composed of not fewer than four lawyers and two nonlawyers. The members of the circuit bar committees on the effective date of this Rule 5 shall continue as members of the regional disciplinary committee to which their circuit is assigned until their terms expire. Before commencing the duties of a member of the committee, each member shall take an oath to support the constitution of the United States and this state and to fairly and impartially perform the member's duties. Each member shall be appointed to a four-year term. No member shall be requested to serve more than two successive terms exclusive of any unexpired term. Each member shall serve until a successor is appointed and qualified, except that the current members of any region that was formed by the combination of two or more circuits shall not continue to serve after their terms expire unless they are reappointed. The members of the regional disciplinary committees shall serve without compensation, but their reasonable and necessary expenses shall be reimbursed. Each regional disciplinary committee shall select one of its members as chair. The chair of the full committee shall be the chief administrative officer and shall assign investigations and hearings to the divisions so that no more than one division shall have jurisdiction of the same matter at the same time. Each regional disciplinary committee shall also select one of its

members as secretary to keep minutes of the proceedings of the committee.

5.03. Advisory Committee and Regional Disciplinary Committees--Divisions

The advisory committee and the regional disciplinary committee in any region may sit en banc or in divisions as the committee may determine. Except as provided in Rule 5.05, each division shall be composed of not fewer than three lawyer members and one nonlawyer member and shall have the same powers and duties and follow the same procedures as provided by this Rule 5 for the full committee. The committee chair may sit as a member of any division. A division shall designate one of its members as the presiding officer and one to keep minutes of its proceedings.

5.04. Disciplinary Hearing Panels - Officers - Appointment - Reassignment

This Court shall appoint a minimum of twenty-four lawyers and twelve nonlawyers as disciplinary hearing officers. The qualifications, terms, and reimbursement of a disciplinary hearing officer shall be the same as for a member of the advisory committee. In addition, each member of the advisory committee shall be a disciplinary hearing officer.

The chair of the advisory committee shall appoint a three-member disciplinary hearing panel to hear each matter for which an information is filed. Each panel shall consist of two lawyers, one of whom shall be designated as the presiding officer, and one nonlawyer. The chair of the advisory committee may reassign or replace disciplinary hearing officers as may be necessary.

Before commencing duties as a disciplinary hearing officer, the officer shall take an oath to support the constitution of the United States and this state and to perform the officer's duties

fairly and impartially. Members of the advisory committee need not take an oath in addition to that prescribed in Rule 5.01.

5.05. Quorum of Committees, Divisions and Disciplinary Hearing Panels

Any action undertaken by the advisory committee, a regional disciplinary committee, or a division thereof, or a disciplinary hearing panel shall be concurred in by a majority of those present. A quorum shall be at least three members. No action may be taken without the participation of at least one of the nonlawyer members unless the panel, committee or division expressly determines that no nonlawyer member is available and that the public interest requires that the proceeding go forward. If a quorum is not present at any session, the chair or presiding officer may schedule the session for a different time.

5.06. Chief Disciplinary Counsel

This Court shall appoint a "Chief Disciplinary Counsel," who shall serve at the pleasure of the Court.

The chief disciplinary counsel shall be a member of The Missouri Bar or become a member within 18 months of the date of appointment.

Before commencing duties as the chief disciplinary counsel, the counsel shall take an oath to support the constitution of the United States and this state and to fairly and impartially perform the counsel's duties.

The counsel shall devote full time to the duties of office and shall not engage in the practice of law, except in the general fulfillment of the counsel's duties.

The chief disciplinary counsel or the counsel's designated

assistants shall serve as counsel for the bar in all disciplinary proceedings and shall conduct necessary investigations as provided in this Rule 5.

The compensation of the chief disciplinary counsel shall be fixed by this Court.

5.08.(a) and (b) Investigations - Jurisdiction

(a) The chief disciplinary counsel has the power, with or without complaint, to investigate any matter of professional misconduct. The chief disciplinary counsel may investigate any such matter alleged to have been committed in this state or alleged to have been committed in another state by a member of The Missouri Bar. Each regional disciplinary committee or division thereof may investigate any such matter upon request of the advisory committee or the chief disciplinary counsel.

(b) If a regional disciplinary committee is unable to undertake or complete an investigation for any reason, notice of this fact shall be given to the chief disciplinary counsel. The chief disciplinary counsel shall refer the matter to a different committee or shall conduct the investigation. If the chief disciplinary counsel is unable to undertake or complete an investigation or is otherwise disqualified from acting in any matter, notice of this fact shall be given to the advisory committee. The advisory committee may send a written request for information to the lawyer or complainant if the committee believes the response will conclude the investigation or assist in determining to which regional disciplinary committee the matter should be referred. If the response does not conclude the investigation or if no written request is made, the advisory committee shall refer the matter to an appropriate regional disciplinary committee.

5.09. Investigations - Conduct - Subpoenas

Investigations under this Rule 5 are for the purpose of determining probable cause, in the manner of a grand jury proceeding, and may be conducted in a summary and informal manner.

The chief disciplinary counsel, on behalf of the counsel, a disciplinary hearing panel, or any committee or division conducting an investigation, may issue subpoenas for documents and witnesses to testify under oath before the counsel, panel, committee, or division or before a member of the committee or division conducting the investigation. The chief disciplinary counsel may seek to compel answers to any proper question and may seek enforcement of any such subpoena in this Court, in the circuit court to which this Court refers the matter, or in the circuit court for the county in which the subpoena was served.

A record of all investigations shall be made.

Persons being investigated are not entitled to be present throughout the investigation.

5.10. Resolution of Complaints

The chief disciplinary counsel may refer those complaints that it believes may be best resolved outside of the formal disciplinary proceedings to The Missouri Bar Complaint Resolution Program, which shall attempt to resolve the matters raised by the complaint. If the complaint resolution program is unable to resolve the matter, or if it appears that the matter should be further considered by the chief disciplinary counsel, the complaint shall be referred back to the office of the chief disciplinary counsel for investigation pursuant to this Rule 5. Governance of The Missouri Bar Complaint Resolution Program shall be in accordance with the guidelines established for such purpose and approved by this Court. In addition, the records of all such referrals, complaints, conferences and

proceedings shall be filed with the chief disciplinary counsel and shall be subject to the same restrictions concerning confidentiality as provided in Rule 5.31.

5.11. Probable Cause Finding - Admonition or Information - Service on Respondent

(a) If after completion of an investigation, the chief disciplinary counsel, a majority of the regional disciplinary committee, or the majority of a division thereof, as the case may be, finds that there is probable cause to believe that the individual under investigation is guilty of professional misconduct, it may administer an admonition or cause an information to be prepared.

(b) If the chief disciplinary counsel, a majority of the committee, or a majority of a division, as the case may be, finds that the professional misconduct is of such nature that further proceedings are not warranted, a written admonition may be administered to the respondent. The admonition shall be served upon the respondent as provided in Rule 5.18 in lieu of an information being prepared. A copy of such admonition shall become part of the record. Within fifteen days of the receipt of such admonition, the respondent so admonished shall accept or reject the admonition in writing. Failure of the respondent to timely respond in writing is an acceptance of the admonition. If the admonition is rejected, the entity finding probable cause shall prepare an information. If the admonition is rejected, the admonition shall not be used as evidence or otherwise for any purpose except as provided in Rule 5.31.

(c) An information shall be styled "In re: (Name of Respondent)", shall set forth in brief form the specific acts of misconduct charged, and shall state briefly the grounds upon which the proceedings are based. Any number of acts may be charged in the same information, but each act shall be separately stated. Two or more acts of misconduct charged

against one or more persons jointly may be united and stated in the same information but each act shall be separately stated. Two or more acts of misconduct charged against one or more persons jointly may be united and stated in the same information whether the acts occurred in the same or different regions. The information shall be signed by one of the following: chief disciplinary counsel; the chair and secretary of the regional disciplinary committee; by a majority of the members of the committee; or the presiding officer or a majority of the members of the division of the committee to which the matter was assigned. Each information is subject to review and revision as to form and style by the chief disciplinary counsel before service on the respondent and shall include the name and address of the person designated by the chief disciplinary counsel as counsel of record for the informant. The information shall be served on the respondent as provided in Rule 5.18, and a copy shall be delivered to the chief disciplinary counsel and the chair of the advisory committee. The information shall be accompanied by a list of the names of all disciplinary hearing officers and advisory committee members and a copy of any statements or documents obtained in the investigation or with a notice that such material is voluminous and is available for inspection and copying. Proof of service shall be filed with the chief disciplinary counsel as a part of the record of the proceedings.

5.14. Peremptory Challenges - Assignment to Disciplinary Hearing Panel - Duty of Chief Disciplinary Counsel - Failure to Request or Attend Hearing

When an answer is filed, the respondent may exercise peremptory challenges of two persons from the furnished list of disciplinary hearing officers and advisory committee members. The persons challenged shall be ineligible to serve on the disciplinary hearing panel assigned to try the information. The peremptory challenges shall be directed to the chair of the advisory committee with service on the counsel of record for

the informant and the chief disciplinary counsel.

Within 15 days of receipt of a timely answer, the chair of the advisory committee shall assign the information to a disciplinary hearing panel. The assignment shall be made in writing addressed to the presiding officer of the disciplinary hearing panel and accompanied by the information and answer.

The respondent, counsel for the informant and the chief disciplinary counsel shall be given written notice of the assignment of the disciplinary hearing panel. The chief disciplinary counsel or the counsel's designee shall enter an appearance before the assigned disciplinary hearing panel and shall be responsible for all further conduct of the matter before the disciplinary hearing panel and this Court.

If the respondent fails to attend the hearing, the information shall be filed as an information in this Court with notice of these facts. The information shall be treated in the same manner as an information filed in this Court after the failure to file an answer pursuant to Rule 5.13.

Time to file an answer may be extended by the chair of the advisory committee only once and solely for good cause shown. The request for the extension shall be filed within 30 days of the date the original answer was due.

5.15. Conduct of Hearing - Appointment of Counsel

(a) The presiding officer of the disciplinary hearing panel assigned to hear an information shall set a date for hearing that is no more than sixty days from the date the information was assigned to the panel and shall provide at least thirty days written notice of the hearing date to the respondent and the counsel for the informant. For good cause shown, the presiding officer with the concurrence of at least one other member of the disciplinary hearing panel may allow additional time, not to

exceed ninety days from the original hearing date, for completion of the hearing.

(b) The hearing shall be for the purpose of determining whether the respondent is guilty of professional misconduct. The hearing shall be conducted on the information, which can be amended at any time before submission to the panel. If any amendment substantially changes the charges, the respondent shall be given a reasonable time to respond. When requested by the respondent and upon a showing of financial inability to employ counsel, the advisory committee shall appoint or employ counsel to represent the respondent.

(c) All hearings shall be in accordance with the rules of this Court, except that discovery shall be limited to requests for production of documents, requests for admissions, and depositions, and shall be completed within the time limitations provided in Rule 5.15(a). Disputes concerning discovery shall be resolved by the presiding officer of the hearing panel. The rules of evidence for trials in the circuit courts shall apply. The burden of proof shall be on the informant to establish a violation of Rule 4 by a preponderance of the evidence. The proceedings shall be recorded.

The time requirements for the conduct of hearings contained in this Rule 5.15 are guidelines and are not jurisdictional.

5.16. Decision of Disciplinary Hearing Panel - Findings and Recommendations

The disciplinary hearing panel shall render a written decision within 30 days of the completion of the hearing. The decision shall include a finding regarding each specific act of misconduct charged in the information and, in those cases where there is a finding of any violation of Rule 4, shall also include a recommendation for discipline.

The recommended discipline may include a public reprimand, suspension or disbarment, or a combination of the above. If a recommendation for suspension or disbarment is included, it may suggest a length of time that must elapse before the respondent is eligible to apply for reinstatement and may include other conditions precedent to consideration of an application for reinstatement.

The written decision shall be filed with the chair of the advisory committee and served on the respondent, the counsel for the informant and the chief disciplinary counsel.

Neither the findings nor the recommendation shall have any binding or limiting effect on this Court in reaching a final determination in any case.

The time requirements for issuance of the written decision contained in this Rule 5.16 are guidelines and are not jurisdictional.

5.18. Service

When service is required to be made on respondent by this Rule 5, unless otherwise specified, it shall be made by any method provided by Rule 43.01. Service of an information shall be made by any method that will give notice reasonably calculated, under all the circumstances, to apprise the respondent of the pendency of the action and offer the respondent an opportunity to be heard. Such methods include, but are not limited to, service by certified mail, restricted delivery, or service by any method provided by Rule 54. If personal service, service by Rule 54.16, or service by certified mail, restricted delivery, cannot be obtained, the information may be served by first class mail to respondent at the address designated by respondent in the most recent registration with, or change address notification to, The Missouri Bar or, if such address is not available, to the

address furnished by respondent to the client whose complaint is the basis for the charges or, if such address is not available, to the last known office or residence address of respondent. No further service need be attempted; however, additional notice to the respondent may be attempted in the discretion of the chief disciplinary counsel.

5.19 Procedure Following Decision of a Disciplinary Hearing Panel

(a) After a hearing, a disciplinary hearing panel may find that the information should be dismissed, a written admonition should be administered to the respondent, or that further proceedings are warranted.

(b) If a written admonition is administered to the respondent, it shall be served upon the respondent as provided in Rule 5.18.

Within fifteen days of the receipt of the admonition, the respondent so admonished shall accept or reject the admonition in writing. If accepted, the written admonition shall become part of the record. Failure of the respondent to timely respond in writing is an acceptance of the admonition.

If the admonition is rejected, the disciplinary hearing panel shall render a written decision within fifteen days of receipt of the rejection or within the time provided for a decision in Rule 5.16, whichever is later. The decision shall include the findings and recommendations required by Rule 5.16.

If the admonition is rejected, the admonition shall not be used as evidence or otherwise for any purpose, except as provided in Rule 5.31.

(c) If the disciplinary hearing panel after a hearing recommends dismissal of the information and the parties concur in the panel's written decision, the chief disciplinary counsel shall dismiss the

information.

If the disciplinary hearing panel after a hearing recommends discipline and the parties concur in the panel's written decision, the parties shall file with this Court a copy of the panel's decision and a written stipulation of their concurrence in the panel's written decision including the recommendation for discipline.

The stipulation shall be filed in this Court within thirty days after the date of the panel's decision.

If the Court concurs in the panel's recommendation of discipline, the Court shall adopt the recommendation without further hearing or proceeding.

(d) If:

(1) The chief disciplinary counsel does not concur in the panel's decision to dismiss the information,
(2) The parties do not file a written stipulation within thirty days after the date of the panel's decision, or
(3) This Court does not concur with the panel's recommendation of discipline, the chief disciplinary counsel shall file in this Court the complete record made before the disciplinary hearing panel within thirty days after the deadline for filing a stipulation or as otherwise ordered by this Court. The matter shall be briefed and argued in this Court as though a petition for an original remedial writ has been sustained.

(e) If this Court finds for the respondent, it shall dismiss the information.

If this Court finds the professional misconduct charged in the information, it shall impose appropriate discipline.

(f) When requested by the respondent, and upon a showing of

financial inability to employ counsel, this Court shall appoint counsel to represent the respondent in this Court. Compensation shall be fixed by this Court and shall be payable from the Advisory Committee Fund.

(g) If the respondent is a member of the bar of this state and is also licensed in any other state, a copy of this Court's decision to discipline shall be forwarded to the chief disciplinary counsel. The chief disciplinary counsel shall forward the decision to the appropriate disciplinary authorities of the other states wherein the respondent is licensed.

If the respondent is a member of the bar of another state and not of this state and the charges are found to be true, this Court shall render a judgment finding respondent guilty and shall reprimand the respondent or enjoin the respondent from practicing law within the state of Missouri for a time fixed in the discretion of this Court. A copy of this Court's order shall be forwarded to the chief disciplinary counsel. The chief disciplinary counsel shall forward the order to the appropriate disciplinary authorities of the states wherein the respondent is licensed.

(h) Costs in the matter shall be taxed as this Court, in its discretion, may order.

5.27. Notification of Clients and Counsel

In every case in which a lawyer is disbarred or suspended, within thirty days from the date of the disbarment or suspension the lawyer shall:
(a) Deliver the lawyer's license to practice law to the clerk of this Court or file an affidavit that the license has been lost or destroyed;
(b) Notify all clients in writing and any counsel in pending matters that the lawyer has been disbarred or suspended;(c) In the absence of co-counsel, notify all clients to make

arrangements for other representation, calling attention to any urgency in seeking the substitution of another lawyer;
(d) Deliver to all clients being represented in pending matters any papers or other property to which they are entitled or notify them and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property;
(e) Refund any part of any fees paid in advance that have not been earned;
(f) Notify opposing counsel in pending litigation or, in the absence of such counsel, the adverse parties of the lawyer's disbarment or suspension and consequent disqualification to act as a lawyer after the effective date of such discipline;
(g) File with the court, agency or tribunal before which the litigation is pending a copy of the notice to the opposing counsel or adverse parties;
(h) Keep and maintain a record of the steps taken to accomplish the foregoing; and
(i) File proof with this Court and the chief disciplinary counsel of complete performance of the foregoing.

5.28. Reinstatement

(a) Any person:
(1) Who is disbarred;
(2) Whose license to practice law is suspended, except a suspension for less than three years for either failure to pay the annual enrollment fee or failure to comply with Rule 15; or
(3) Who voluntarily surrendered a license; may seek reinstatement of the person's license upon application to this Court pursuant to this Rule 5.28.

(b) Any application for reinstatement shall include specific allegations showing that:
(1) The cause for suspension, surrender, or disbarment has abated;

(2) All persons injured as a result of the conduct that resulted in the loss of the right to practice law have received restitution, their claims have been discharged by operation of law, or the injured persons have been notified at least ten days but not more than ninety days in advance of the filing of the petition for reinstatement;
(3) All special conditions for reinstatement required by this Court at the time the right to practice law was lost have been accomplished;
(4) The person has taken within the two years immediately preceding the application the multistate professional responsibility examination and scored a grade at least equal to that established by the board of law examiners as passing at the time the examination was taken;
(5) If the person has not practiced law in any jurisdiction during the period of discipline and has been disciplined for:

(A) Less than three years, the person has completed at least fifteen hours of continuing legal education credit within twelve months prior to the date the petition is filed; or

(B) At least three years, the person has completed at least thirty hours of continuing legal education credit, including at least three hours of ethics credit, within twenty-four months prior to the date the petition is filed. For purposes of this Rule 5.28(b)(5), a person shall be engaged in the full-time practice of law for at least twelve months immediately prior to the date of filing the petition for reinstatement to be deemed a lawyer who practiced law; and
(6) The person is of good moral character and the best interest of the public will be served by reinstatement of the person's license to practice law.

(c) A person seeking reinstatement because he or she is disbarred is not required to include specific allegations contained in Rule 5.28(b)(5). Such person shall include specific allegations that within one year of the date of filing the application for reinstatement the person has taken the bar examination prescribed by Rule 8.08 and has attained a passing

score.

(d) The provisions of Rules 5.28(b)(4) and (5) do not apply to a person seeking reinstatement because the person's license was suspended for more than three years solely for failure to comply with Rule 15 or failure to pay the annual enrollment fee.

(e) Except for good cause shown, no application for reinstatement for a person who is:

(1) Suspended, except a person suspended under Rule 5.245, shall be considered until after six months of the date discipline is imposed unless the Court provides by order for a longer time; or

(2) Disbarred shall be considered until after five years of the date discipline is imposed; or

(3) Notwithstanding Rule 5.28(e)(1) and Rule 5.28(e)(2), suspended or disbarred because the person has pleaded guilty or nolo contendere to or been found guilty of any felony of the United States, this state, any other state or any United States territory, whether sentence is imposed or not, shall be considered until five years after the date of successful completion of any sentence or period of probation as a result of the conviction, plea, or finding of guilt.

(f) In addition to the requirements of Rule 5.28(b), upon application by any person suspended under the provisions of Rule 5.23, this Court may direct such action as it deems necessary or proper, including the direction of an examination of the lawyer by such qualified medical expert as this Court shall designate. Rule 5.28(g) shall govern the cost incurred in processing such application.

At the time of filing such an application for reinstatement, the lawyer shall be required to disclose the name of every

psychiatrist, psychologist, physician and hospital by whom and at which the lawyer has been examined or treated during the disability or since the suspension and shall furnish to this Court written consent for each to divulge such information and records as ordered by this Court.

This Court may fix the compensation to be paid to any medical expert appointed by this Court, and such charges shall be a cost of investigation as that term is used in Rule 5.28(g).

(g) When a person who has surrendered a license to practice law or who has been disbarred or suspended makes application for reinstatement, except an application for reinstatement as a matter of course under Rule 6.01(f), a cash deposit for costs of investigation and reporting on such application for reinstatement in the amount fixed by the chief disciplinary counsel shall be paid to the clerk of this Court within the time allowed by the chief disciplinary counsel. The amount paid shall be deposited to the credit of the advisory committee fund. No report or hearing shall be had on any application for reinstatement until the required deposit is made. The chief disciplinary counsel may at any time require an additional deposit if necessary to pay such costs. Any amount deposited in excess of the costs incurred shall be refunded to the applicant.

(h) All applications for reinstatement shall be referred to the chief disciplinary counsel for report and recommendation. The report shall be served by the chief disciplinary counsel on the applicant for reinstatement as provided in Rule 5.18. The applicant may file a written response to the report with the chief disciplinary counsel within 15 days of the date of the mailing of the report.

The report, recommendation, and response, if any, shall be filed by the chief disciplinary counsel with this Court upon receipt of the response or the expiration of the time for making a response. The Court shall make a determination whether to reinstate the

license of the applicant on the basis of the report, recommendation and response.

If the applicant has been suspended:

(1) Indefinitely with leave to reapply in a period of six months or less and is not on probation under Rule 5.225, or

(2) Under Rule 5.245 for three years or less,
the license shall be reinstated as a matter of course 30 days after the application for reinstatement is referred to the chief disciplinary counsel for report and recommendation. If within this 30-day period the chief disciplinary counsel files a motion to respond to the application for reinstatement, the license shall not issue and the matter shall proceed as otherwise provided in this Rule 5.28(h). Any lawyer automatically suspended under Rule 5.245 for three years or less who is reinstated under this Rule 5.28(h) is retroactively reinstated if the lawyer is then in compliance with Rule 6.01 and Rule 15.

(i) In lieu of reinstating the applicant's license, the Court may direct the advisory committee to appoint a disciplinary hearing panel to conduct a hearing into any allegations of misconduct contained in the report to which the applicant objects. The hearing shall be conducted as provided in Rule 5.14.

The panel shall file a report. The report shall determine all matters in dispute and make a recommendation as to whether the applicant's license should be reinstated.

5.30. Opinions and Regulations by Advisory Committee

(a) The advisory committee may give formal opinions as to the interpretations of Rules 4, 5, and 6, and the amendments or additions thereto and may make regulations consistent therewith for the administration of Rules 4, 5, and 6. Formal opinions and regulations of the advisory committee shall be published in the

Journal of The Missouri Bar after adoption thereof.

(b) The chief disciplinary counsel or any member of the bar who is substantially and individually aggrieved by any formal opinion of the advisory committee may petition this Court for review of the opinion. The Court in its discretion may direct that the petition be briefed and argued as though a petition for an original remedial writ has been sustained, may sustain, modify or vacate the opinion, or may dismiss the petition.

(c) The ethics counsel on behalf of the advisory committee on request may give a member of the bar an informal opinion on matters of special concern to the lawyer. Informal opinions are not binding. Written summaries of informal opinions may be published for informational purposes as determined by the advisory committee.

5.315. Immunity and Privileges

(a) Communications submitted to the advisory committee, chief disciplinary counsel, regional disciplinary committees, disciplinary hearing panels, or the staffs of any of these entities relating to lawyer misconduct or disability are absolutely privileged if submitted in good faith. No lawsuit predicated on such communications may be instituted.

(b) All complainants and all witnesses are immune from suit for any testimony given in the course of any proceeding under this Rule 5.

(c) The advisory committee, chief disciplinary counsel, regional disciplinary committees, disciplinary hearing panels, their staffs and representatives are immune from suit for *any* conduct in the course of their official duties.

Missouri Supreme Court Rule 84.16(b)

84.16. Opinion in Writing - Memorandum Decisions and Written Orders - When Filed - How Endorsed and Transmitted

(b) Memorandum Decisions and Written Orders. In a case where all judges agree to affirm and further believe that an opinion would have no precedential value, disposition may be by a memorandum decision or written order. A memorandum decision or written order may be entered only when the appellate court unanimously determines that any one or more of the following circumstances exists and is dispositive of a matter submitted for decision:

(1) That a judgment of the trial court reviewable under Rule 84.13(d) is supported by substantial evidence and is not against the weight of the evidence (Note: see *Murphy v. Carron,* 536 S.W.2d 30 (Mo. banc 1976));

(2) That a judgment of the trial court in a proceeding under Rule 24.035 or Rule 29.15 is based on findings of fact that are not clearly erroneous;

(3) That the evidence in support of a jury verdict is not insufficient;

(4) That the order of an administrative agency is supported by competent and substantial evidence on the whole record;

(5) That no error of law appears.

Missouri Supreme Court Rule 84.17(a)

84.17. Post-Disposition Motions

(a) Post-disposition motions. In addition to an

application for transfer under Rule 83, any party may file the following post-disposition motions:

(1) *A motion for rehearing.* The motion shall briefly and distinctly state the grounds upon which rehearing is sought. The purpose of a motion for rehearing is to call attention to material matters of law or fact overlooked or misinterpreted by the court, as shown by its opinion, written order under Rules 84.16(b) or 30.25(b), memorandum decision or order of dismissal. Reargument of issues determined by the court will be disregarded.

(2) *A motion to modify.* The motion shall briefly and distinctly state the grounds upon which modification is sought. The purpose of a motion to modify is to correct errors of law or fact that do not affect the disposition of the case.

(3) *A motion to publish an opinion.* The motion shall briefly and distinctly explain why the court's disposition of the appeal has precedential value, in whole or in part.

28 U.S. C. §1257

§ 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

Italics added
Excerpts of Comments